

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Plaintiff

v.

Oscar Rivera,

Defendant

Case No.: 2:18-cr-00300-JAD-VCF

Order Denying Motion to Reduce Sentence

[ECF No. 130]

Oscar Rivera pled guilty to one charge of conspiracy to distribute methamphetamine, and I sentenced him to 60 months in custody followed by 5 years of supervised release.¹ Rivera moves for a two-point reduction in his sentence in reliance on recently proposed amendments to the sentencing guidelines, or alternatively a stay of his motion pending Congress's approval of the amendments.² The government opposes Rivera's motion, arguing that Rivera does not qualify for a reduction under § 4C1.1 because he is not a zero-point offender.³ Because Rivera's criminal-history category is too high to qualify for a two-level reduction under the anticipated guideline amendments, I deny his motion.

Discussion

A court may reduce a defendant's sentence if his "term of imprisonment [was] based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o) . . . after considering the factors set forth in section 3553(a) . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing

¹ ECF No. 111.

² ECF No. 130.

³ ECF No. 132.

1 Commission.”⁴ The Sentencing Commission submitted criminal-history amendments to
2 Congress in May 2023.⁵ Under proposed § 4C1.1, a defendant with zero criminal-history points
3 whose offense did not involve specific aggravating factors may receive a two-level decrease in
4 his offense level.⁶ The commission based this change on its recidivism studies that show that
5 offenders with zero criminal-history points have lower recidivism rates.⁷ If Congress does not
6 alter or deny the proposed amendments, they will take effect on November 1, 2023, and courts
7 may apply them retroactively.⁸

8 Rivera argues that he has zero to one criminal-history points and deserves a sentence
9 reduction based on the anticipated amendment.⁹ But the government correctly points out that, in
10 fact, Rivera has two criminal-history points. So he won’t qualify for a reduction under § 4C1.1,
11 and delaying a ruling on his motion until November would be futile.¹⁰ Because Rivera is not a
12 zero- or one-point offender, I deny his motion with prejudice.

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17 ⁴ 18 U.S.C. § 3582(c)(2).

18 ⁵ Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254 (proposed May 3, 2023).

19 ⁶ *Id.* at 28273.

20 ⁷ *Id.*; see also U.S. Sent’g Comm’n, *Recidivism of Federal Offenders Released in 2010* (2021),
available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210930_Recidivism.pdf)
21 [publications/2021/20210930_Recidivism.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210930_Recidivism.pdf).

22 ⁸ Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28254 (proposed May 3, 2023).

23 ⁹ ECF No. 130.

¹⁰ ECF No. 132; These two criminal-history points are reflected in Rivera’s presentence
investigation report at ¶ 55–56.

Conclusion

IT IS THEREFORE ORDERED that Rivera's motion for a sentencing reduction based on the anticipated change in the Sentencing Guidelines [ECF No. 130] is **DENIED** with prejudice.



U.S. District Judge Jennifer A. Dorsey
September 19, 2023